IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2018

Delivered on : 22.01.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).Nos.1374 & 1375 of 2007
&
M.P.No.2 of 2007

Baskaran ...Petitioner

Vs

1.Sundarammal (Deceased)

2.Rosalin Vasantha

3.Leema Rose

4.Abhishek Bendet

5.R.Victoria ...Respondents

(Respondents 3 to 5 brought on record as legal heirs of the deceased first respondent viz. Sundrammal vide Court order dated 06.02.2017 made in M.P.No.1 of 2012 in C.R.P.No.1374 of 2007 and M.P.No.1 of 2012 in C.R.P.No.1375 of 2007)

WEB COPY

http://www.judis.nic.in

PRAYER IN C.R.P(NPD).1374 OF 2007: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the Judgment and Decree dated 30.12.2005 made in R.C.A.No.11 of 2001 on the file of the Court of the Subordinate Judge-Cum-Rent Control Appellate Authority, Pollachi setting aside the Order dated 17.04.2001 made in R.C.O.P.No.22 of 1997 on the file of the Court of the District Munsif-cum-Rent Controller, Pollachi.

PRAYER IN C.R.P(NPD).1375 OF 2007: Civil Revision Petition is filed under Section 25 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the Judgment and Decree dated 30.12.2005 made in R.C.A.No.12 of 2001 on the file of the Court of the Subordinate Judge-Cum-Rent Control Appellate Authority, Pollachi setting aside the Order dated 17.04.2001 made in R.C.O.P.No.12 of 1997 on the file of the Court of the District Munsif-cum-Rent Controller, Pollachi.

सत्यमेव जयते

For Petitioner	:	Mr.T.P.Manoharan Senior Counsel for Mr.K.P.Jotheeswaran
For Respondent 1	:	Died
For Respondent 2	:	Mr.J.Hariharan

WEB COPY

http://www.judis.nic.in

For Respondents 3 and 4 : No Appearance

For Respondent 5 : Not Ready in Notice

O R D E R

The Tenant is the Revision Petitioner before this Court. The revision is directed against the order of eviction passed by the Subordinate Judge-cum-Rent Control Appellate Authority, Pollachi, in R.C.A.No.11 of 2001 in and by which the authority has reversed the order of the District Munsif-cum-Rent Controller, Pollachi, in R.C.O.P.No.22 of 1997. The Tenant had also challenged the order in R.C.A.No.12 of 2001 on the file of the Subordinate Judge-cum-Rent Control Appellate Authority, Pollachi, in and by which the order of the District Munsif-cum-Rent Controller, Pollachi, in R.C.O.P.No 12 of 1997 was reversed. R.C.O.P.No.12 of 1997 was filed by the Tenant under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for depositing the rents. The parties are arrayed as Tenant and Landlord respectively.

WEB COPY

The facts in brief necessary for disposal of the above Civil Revision Petition are as follows:

http://www.judis.nic.in

2.The Landlord had instituted proceedings to evict the tenant on the ground that he is in arrears of rent from January 1996. It was the case of the Landlord that the tenant had taken on lease the petition premises on a monthly rental of Rs.2,500/- and the petition premises was used by the tenant for running a provisions store. It was the case of the Landlord that till year 1994 the rent was a sum of Rs.2,250/- and from December 1994 the rent had been enhanced to a sum of Rs.2,500/-. The advance in the hands of the Landlord was a sum of Rs.5,000/-. The Landlord would contend that the rent till year 1995 had been paid and the tenant was in the habit of getting the signature of the Landlord in a small note book every time after he paid the rent, which was the receipt for the rents paid.

3.He would contend that after December 1995, the Tenant did not tender the rents. The Landlord time and again requested the Tenant to regularize the account, but, however, the he kept requesting time and when he was contacted in December 1996 he had informed the Landlord that he would clear the arrears by 08.01.1997. However, when the Landlord had visited the Tenant's shop on 08.01.1997

WEB COPY

http://www.judis.nic.in

instead of regularizing the arrears the Tenant had threatened the Landlord and therefore the Landlord was constrained to initiate a Police complaint. It was the further case of the Landlord that on 16.02.1997 a legal notice was issued by the Tenant stating that the rents up to December 1996 had been paid and when the Tenant had tendered the rent for the month of January 1997, the Landlord had refused to receive the same demanding an enhanced rent of Rs.2,500/-. To this notice the Landlord had sent a reply dated 26.02.1997 denying the statements made thereon. On 11.03.1997, a rejoinder was issued by the Tenant stating that in the earlier notice dated 16.02.1997 by an oversight the advance was shown as sum of Rs.5,000/- instead of a sum of Rs.50,000/-. In the said notice the Tenant had further requested the Landlord to give his bank details so as to enable the Tenant to deposit the rents into the respondent's bank account. Thereafter the Tenant has also filed an application in R.C.O.P.No.12 of 1997, under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, herein after called the Act for depositing rents for the month of January 1997 into Court. The Landlord had thereafter filed R.C.O.P.No.22 of 1997 seeking the eviction of the Tenant on the ground of willful default.

WEB COPY

http://www.judis.nic.in

4.The Tenant had resisted the above petition inter alia denying the contentions raised by the Landlord in their rent control petition and contending that the Tenant had been inducted as a tenant on a monthly rental of Rs.500/- which was enhanced to sum of Rs.1,000/- as on the date of filing of the petition. The Tenant would contend that the rents up to the period of December 1996 had been paid and the Landlord was never in the habit of issuing a receipt. On 08.01.1997, when the Tenant had gone to the Landlord to tender the rent, the Landlord refused to receive the same stating that the Tenant should pay an enhanced rent of Rs.2,500/- which was refused by the Tenant. Thereafter on 16.02.1997, the Tenant had issued a legal notice asking the Landlord to furnish his bank details so that the rents can be deposited into his bank account. The Landlord had sent a reply notice contending totally false details which was once again reiterated in the petition for eviction. The Tenant had further contended that by an oversight in his earlier notice dated 16.02.1997 he had stated that an advance of Rs.5,000, was paid and immediately on coming to notice this oversight on the receipt the reply from the Landlord, the Tenant had rectified the error by issuing a rejoinder in which he has stated

WEB COPY

http://www.judis.nic.in

that the advance paid is a sum of Rs.50,000/- and not Rs.5,000/- as mentioned in the notice dated 16.02.1997.

5.Before the learned District Munsif-cum-Rent Controller, Pollachi the Landlord had examined himself as P.W.1 and one Boobalakrishnan, Market Superintendent as P.W.2. The Landlord had marked EX.B.1 to EX.B.3 in support of his case. The Tenant had examined himself as R.W.1 and the Revenue Inspector, Pollachi Municipality as R.W.2 and had marked the Corporation Property Tax Registrar as EX.R.1. The learned District Munsif-cum-Rent Controller, Pollachi on a detailed examination of the evidence on record had dismissed the petition for eviction by holding that the Landlord had not been able to prove the default by the Tenant. The learned District Munsif-cum-Rent Controller, Pollachi had also held that the rent in respect of the premises could only be a sum of Rs.1,000/- in view of the deposition of the Revenue Inspector of the Pollachi Municipality who was examined as R.W.2.

WEB COPY

6.Consequently, the learned Rent Controller by a common order had allowed R.C.O.P.No.12 of 1997. The learned Rent Controller had

http://www.judis.nic.in

taken note of the fact that the Landlord had been withdrawing the amount that had been deposited by the Tenant without any protest whatsoever. The learned Rent controller had dismissed R.C.O.P.No.22 of 1997.

7.The Landlord had challenged this order of the learned District Munsif-cum-Rent Controller, Pollachi by filing R.C.A.No.12 of 2001 and R.C.A.No.11 of 2001 respectively on the file of the Subordinate Judge-cum-Rent Controller Appellate Authority, Pollachi. The learned Subordinate Judge-cum-Rent Controller Appellate Authority, Pollachi reversed the orders of the learned District Munsif-cum-Rent Controller, Pollachi primarily on the basis of the evidence of P.W.2 who had deposed that for the shops owned by the municipality in the Bus stand situated opposite to the demised premises shops were being auctioned at the rate of Rs.13,000/- and some were being auctioned at the rate of Rs.2,000/- to Rs.3,000/-. These rates were with reference to the shops measuring an extent 10 X 12 feet.

WEB COPY

8.Challenging this common order the Tenant is before this Court. C.R.P(NPD).No.1374 of 2007 is filed challenging the order in

http://www.judis.nic.in

R.C.A.No.11 of 2001 (the petitioner seeking eviction) and C.R.P(NPD).No.1375 of 2007 is filed challenging order in R.C.A.No.12 of 2001 (Section 8(5) petition).

9.Mr.T.P.Manoharan, Senior counsel appearing for the Tenant would contend that the learned Rent Controller has rightly dismissed the eviction petition since the Landlord had not been able to substantiate his claim that the rent in respect of the premises was a sum of Rs.2,500/-. The learned senior counsel would also argue that the advance which is lying with the Landlord was a sum of Rs.50,000/. He would argue that in the rejoinder dated 11.03.1997 the Tenant had categorically stated that the advance paid by him was a sum of Rs.50,000/- and not Rs.5,000/- as mentioned in EX.A.1 legal notice, there was no denial by the Landlord. He would also draw my attention to the various findings of the learned Rent Controller with reference to the fixation of the rent, the onus of proof, etc.

WEB COPY

10.He would further argue that the Appellate Authority has taken into account the evidence of P.W.2 which is a totally unreliable evidence since, even according to P.W.2 the rent in respect of the

http://www.judis.nic.in

premises of the same size as the demised premises could fetch a rent of anything between Rs.2,000/-, Rs.3,000/- or Rs.13,000/-. This fluctuation in the rate of rents was only on account of the fact that the shops were being let out in auction and therefore there would be high bids. That apart, these shops are located in the Bus Stand Complex. He would also draw the attention of this Court to the finding of the Rent Controller about drawing an adverse inference against the Landlord for not examining any of the other tenants to prove the rate of rent. He would contend that the reliance upon the evidence of P.W.2 was totally misplaced. When the tenant had categorically come forward with the case that there was no arrears on his side and further it was the tenant who had first issued the notice and not the Landlord.

11.The learned counsel would also further argue that the Appellate Authority had failed to take note of the fact that it is rather unbelievable that the Landlord would keep quite for over a year when the tenant had not paid the rents, since, there is no evidence on the side of the Landlord to show that he has been demanding the payment of rents. In support of his contention the learned Senior Counsel would rely upon the Judgment in ***Gopal Krishnaji Ketkar Vs.***

WEB COPY

http://www.judis.nic.in

Mohamed Haji Latif and others reported in ***AIR 1968 SC 1413***. This case was cited in support of his argument that the Landlord having withheld the best evidence in the form of examining the other tenants, adverse inference had to be drawn against him.

12.He would also rely upon the Judgment in ***M.Salem Vs.Josephine Mary*** reported in ***2004 (1) CTC 29*** which is the Judgment of this Court on the same principle and the Judgment in ***R.Srinivasan Vs. Thangaraju and others*** reported in ***(1999) 2 MLJ 337*** in support of his arguments that Section 8 is only an enabling provision and not a mandatory requirement. He would also rely upon the Judgment in ***A.Marappan Vs. Nagarathinam*** reported in ***(1999) 1 MLJ 418*** this is a case where there was a dispute with reference to the quantum of rent by the tenant who had been sending the admitted rent. This Court has held that in such a case, default, if any, will not amount to willful default. This Court has also observed that a statutory duty is cast upon the Landlord to issue receipts for the rent and when a Landlord comes forward with a case of default then the evidence has to be scrutinized and decided very carefully unless the Landlord is able to prove the same by strong and cogent evidence.

WEB COPY

http://www.judis.nic.in

13.The learned counsel also relied upon the Judgment in ***Chandrasekar Vs. M.Lalitha*** reported in ***(2010) 7 MLJ 348*** to show what circumstances could be termed as willful default. This Judgment and Decree draws support from an earlier Judgments of the Honourable Supreme Court reported in (***2000) 3 SCC 282***.

14.Per contra, Mr.J.Hariharan, learned counsel appearing on behalf of the Landlord would make submissions on the deposit of the rent by the Tenant. It is his contention that where the statutory provisions of Section 8 of the Act has not been followed even if the payments are made there is a default and such default will be treated as willful default.

15.He would further argue that when the provisions of the Act contemplates a particular procedure the said procedure has to be followed to the letter when any action is taken under the said provision. In other words, any deposit made without following the procedure under Section 8 of the Act would amount to a non payment of rent. He relied upon the following Judgments in support of the said proposition:

WEB COPY

http://www.judis.nic.in

1.***S.K.Raffudin and others Vs. N.Yeswantha Rao and others*** reported in ***(1997) 1 MLJ 581***.

2.***Abdul Fatha and another Vs. Villayudham and another*** reported in ***1998 (II) CTC 627***.

3.***Sridharan Vs. S.Natarajan, Kibayathullay and Viswanatha Reddiar*** reported in ***Manu/tn/7996/200***7.

4.***M.Doss, John Mary Vs. A.Sankar*** reported in ***2010 (4) TLNJ 557 (Civil).***

5.***KR.Sathappan, Selvi Vs. AR.Renganayagi*** reported in ***2011 (1) MWN (Civil) 754***.

6.***M.Rajarathinam Vs. J.Babu Shanthi*** reported in ***2013-5-L.W.177***.

7.***S.Panneerammal & others Vs. Ravichandran*** reported in ***2016-5-L.W.302***.

8.***S.Panneerammal, S.Radhakrishnan, S.Ravi & S.Umarani Vs. Ravichandran*** reported in ***2016 (6) CTC 571***.

9.***Chandrasekaran Vs. Marimuthu, Murugesan, Maheswari, Balasubramanian, M.Saran & M.Viknesh*** reported in ***2018 (5) CTC 479***.

WEB COPY

http://www.judis.nic.in

16.Heard both counsels and perused the evidence both oral and documentary. The case of the land lord is that the rent in respect of the demised premises upto the period 1994 was Rs.2,250/- and the rent had been enhanced to a sum of Rs.2,500/- with effect from January, 1995.

17.To support this contention the Landlord has examined the Market Superintendent of the Pollachi Municipality as P.W.2. P.W.2 deposed that the shops measuring an extent of 10 X 12 feet would fetch a rent of either Rs.2,000/-, Rs.3,000/- or Rs.13,000/-. The measurement of the petition premises has not been given. Further, except for the oral submissions of P.W.2 no document has been filed to support the oral evidence that the rent in respect of the shops in the bus stand complex was the same as deposed by P.W.2. It is also to be borne in mind that the shops in the Bus Stand would definitely fetch a higher rent since the footfall in the bus stand is much more and people would tend to purchase more while waiting in the Bus Stand. Considering the fact, that the measurement of the petition premises has not been given and the fact that the oral evidence of P.W.2 is not corroborated by documentary evidence this Court has to necessarily

WEB COPY

http://www.judis.nic.in

fall back on EX.R.2 which is the annual rent that has been fixed by the Pollachi Municipality with reference to the entire building in which the petition premises is situated. That coupled with the admission of the Tenant regarding the annual rent in respect of the building in which the petition premises is situate, this Court concurs with the finding of the Learned Tent Controller that the rent in respect of the petition premises is only Rs.1,000/-.

18.Section 8(1) of the Act mandates the Landlord to give receipts for any payment towards rent or advance duly signed by him. The Landlord has contended that the Tenant had been maintaining the book where the receipts have been noted which statement, the Tenant has emphatically denied. Therefore the onus is on the Landlord to prove that he is in the habit of issuing receipts. Another factor which has to be taken note of is the failure on the part of the Landlord to examine the other tenants whose examination would go long way in proving that the rent in respect of the other portions of the building housing the demised premises is the amount as claimed by the Tenant.

WEB COPY

http://www.judis.nic.in

19.The fact that the Landlord has kept quite for a year without making any demand for the payment of rents also presupposes that the tenant has been regularly paying the rent till December 1996 and it is the tenant first who had issued the notice demanding the details of the Bank from the Landlord. Ex.R.2 reply notice can only be treated as after thought as no Landlord would remain quite for over a year without demanding the rent that long. It is also to be noted that the first move has been made by the tenant by filing the application under Section 8(5) of the Act. Therefore, it is clear that the Landlord has deliberately come forward with a false case.

20.As regards the Judgment of the Appellate Authority in R.C.A.No.12 of 2001, the contention of the tenant is that he had complied with the provisions of Section 8 of the Act before taking out an application for depositing the rents into Court and further the rents have also been withdrawn by the Landlord without any protest and therefore, the Appellant Authority was wrong in dismissing the application filed for depositing the rents into Court.

WEB COPY

http://www.judis.nic.in

21.The counsel for the Landlord has strenuously argued that the non-compliance of the provisions of Section 8 (4) has rendered the Section 8(5) application redundant. The various Judgments which have been relied upon by the learned counsel, are also cases where the Section 8 application has been instituted without following all the provisions preceeding the deposit. The case on hand rests on a different footing.

22.The Landlord has come forward with a case that the rent in respect of the premises is Rs.2,500/- and that the defendant has been in arrears of rent from January 1996 onwards. Both these contentions have been found to be false and the same has been discussed supra. In response to the Ex.A.1 legal notice, the Landlord has sent a reply dated 26.02.1997, wherein the response to the Tenant's request for furnishing the Bank details is that the tenant was in arrears to the tune of Rs.32,500/- and that the said sum should be paid and the Tenant should vacate and hand over the possession of the property, failing which the Landlord had threatened to initiate proceedings for eviction. The reply notice has described the Tenant as a "willful defaulter". Another factor stated in this case is that the Landlord has withdrawn

WEB COPY

http://www.judis.nic.in

the rents deposited by the tenant without any demur or protest and therefore, it can be construed that the Landlord had accepted the deposit.

23.In the Judgment reported in ***1985 (2) MLJ 354 - K.Mohideen Sahib Vs. Theodre Samuel*** this Court has held that the even in case where the tenant has not resorted to the provisions of Section 8[5] by filing a petition even then, he cannot be termed to be a wilful defaulter as his attempts to pay rents has been rejected by the Landlord. The learned Judge had relied upon the Judgment of the Honourable Supreme Court reported in ***AIR 1985 SC 582 – S.Sundaram Pillai and others Vs. V.R.Pattabiraman and others*** wherein the issue of "Wilful default" was considered. In the instant case, the Tenant is the one who had taken the first step to file the application for depositing the rents in view of the refusal of the Landlord to receive the rents and the rent have also been deposited. Once it is held that the rent in respect of all the petition premises is a sum of Rs. 1,000/- and that there is no arrears for the period of January 1990 to December 1996 coupled with the deposit of rents from January 1997 and the same being withdrawn by the Landlord

WEB COPY

http://www.judis.nic.in

without protest, this Court is inclined to agree with the order of the learned Rent Controller and set aside the order passed by the Subordinate Judge/Appellate Authority in RCA.Nos.11 of 2001 and 12 of 2001.

24.In the result, the Civil Revision Petitions are allowed and the orders in RCA.Nos.11 and 12 of 2001 are set aside and the order in RCOP.Nos.12 of 1997 and 22 of 1997 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

22.01.2019

kan

Index : Yes/No
Speaking order/non-speaking order

To
1.The Subordinate Judge-Cum-Rent Control Appellate Authority,
Pollachi.

2.The District Munsif-cum-Rent Controller,
Pollachi.

WEB COPY

http://www.judis.nic.in

P.T.ASHA, J.,

kan

Pre-delivery order in
C.R.P(NPD).Nos.1374 & 1375 of 2007 &
M.P.No.2 of 2007

WEB COPY

22.01.2019

http://www.judis.nic.in